IN THE HIGH COURT OF PUNJAB AND HARYANA AT

CHANDIGARH

C.W.P. NO. 12343 OF 2005

Date of Decision: April 30, 2007

Mewa Singh …Petitioner

Versus

State of Punjab and others …Respondents

CORAM: HON'BLE MR. JUSTICE M.M. KUMAR

HON'BLE MR. JUSTICE RAJESH BINDAL

Present: Mr. Vikas Sharma, Advocate,
for the petitioner.

Mr. M.P. Goswami, DAG, Punjab,
for respondent No. 1.

Mr. P.S. Ranu, Advocate.
for respondent Nos. 2 to 5.

JUDGMENT

M. M. KUMAR, J.

The instant petition filed under Article 226 of the Constitution prays for quashing notice dated 30.7.2003 (P-4) and order dated 1.7.2005 (P-6). A further prayer has been made for directing the respondents not to recover the benefit granted to the petitioner of the military service rendered during the national emergency for the period from 26.10.1962 to January, 1968 and

December, 1971 to August, 1975, towards increments in accordance with the Punjab Government National Emergency (Concession) Rules, 1965.

It is apposite to mention that on 30.7.2003, a notice was issued to the petitioner regarding re-fixation of pay of the petitioner after withdrawal of the benefits of military service (P-4). On 14.8.2003, the petitioner gave a detailed reply to the aforementioned notice (P-5). After lapse of two years, vide impugned order dated 1.7.2005 (P-6), respondent No. 5 ordered recovery of Rs. 1,13,195/- for the period from 25.12.1973 to 30.11.1980 as well as Rs. 5,703/- + Rs. 1,07,492/- for the period from 1.12.1980 to 30.4.2003. The aforementioned amounts have been ordered to be recovered from the gratuity and leave encashment payable to the petitioner.

Mr. Vikas Sharma, learned counsel for the petitioner has argued that no recovery could be effected in view of settled principles of law as laid down by Hon'ble the Supreme Court in case of **Sahib Ram v. State of Haryana, 1995 (1) SCT 668**. According to the learned counsel, there is no element of fraud or misrepresentation on the part of the petitioner and in these circumstances no recovery can be fastened on him.

However, learned counsel for the respondents have argued that once it is accepted that payment of excess amount has been made to the petitioner, then the natural consequence of recovery must follow. According to them, such a course would be available by permitting the respondents to recover the amount by way of easy instalments.

After hearing the learned counsel for the parties, we are of the considered view that in Sahib Ram' case (supra), Hon'ble the Supreme Court has categorically laid down that no recovery could be effected from an employee in the absence of misrepresentation or fraud on his part. Accordingly, the writ petition is allowed. The recovery sought to be effected from the petitioner is quashed and it is directed that the re-fixation shall be maintained as stated by the petitioner.

Writ petition stands disposed of.

(M.M. KUMAR)
JUDGE

(RAJESH BINDAL)
JUDGE

April 30, 2007
Pkapoor